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COURT OF CRIMINAL APPEALS
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No. PD-0514-17
COURT OF APPEALS CAUSE NO. 10-15-00263-CR

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COURT OF CRIMINAL APPEALS
10/4/2017
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TO THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FERNANDO SMITH — Appellant

v.

STATE OF TEXAS — Appellee

Appeal from Coryell County

APPELLANT'S BRIEF

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TABLE OF CONTENTS

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INDEX OF AUTHORITIES

Texas Court of Criminal Appeals:

Texas Courts of Appeals:

Rules/Statutes:

Secondary Source:

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TO THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FERNANDO SMITH Appellant

v.

STATE OF TEXAS Appellee

Appeal from Coryell County

APPELLANT'S BRIEF

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Appellant offers this brief on the merits:

STATEMENT OF THE CASE

Nature of the Case: This is an appeal from a judgment placing Appellant on "shock" community supervision after his community supervision was revoked. (I C.R. at 95-96) (I Supp. C.R. at 8-9) (V R.R. at 8-9) (VI R.R. at 5-8).

Judge/Court: Judge T.D. Farrell (V R.R. at 1), 52nd District Court, Coryell County, and Judge Phillip Zeigler (VI R.R. at 1), sitting for the same.

Pleas: Appellant pled not true to the first alleged violation and

true to the remaining two alleged violations. (III R.R. at 5-6) (IV R.R. at 4).

Trial Court Disposition: The trial court found each and every allegation in the State's motion to revoke true, revoked Appellant's community supervision, and imposed a five-year sentence while giving Appellant credit for all time served. (V R.R. at 8-9). Later, the court placed Appellant on "shock" community supervision for two years and purported to impose all of Appellant's previous conditions of community supervision on him. (VI R.R. at 5-8) (I Supp. C.R. at 5-9).

Appellate Court Disposition: The Waco Court of Appeals dismissed the appeal for want of jurisdiction because, although Appellant filed a timely notice of appeal with respect to the judgment revoking his community supervision, about which he did not complain on appeal, he did not file a new notice of appeal with respect to the judgment that placed Appellant on shock community supervision, about which he did complain on appeal. *Smith v. State*, 518 S.W.3d 641, 645 (Tex. App.—Waco 2017), *petition for discretionary review granted* (Aug. 23, 2017).

ISSUE PRESENTED

ISSUE ONE: When a defendant files a timely notice of appeal from a judgment adjudicating his guilt and is later placed on shock community supervision, to complain on appeal about a condition of that community supervision must he file a new notice of appeal?

STATEMENT OF FACTS

Appellant was placed on deferred adjudication community supervision for assault, and was not ordered to pay restitution in his conditions of community

supervision. (I C.R. at 6-9; 16-17). Later, he was adjudicated guilty and sentenced on May 29, 2015 to five years in prison. (I C.R. at 62-63; 93-94). Appellant timely filed a notice of appeal on June 15, 2015 in which he stated, among other things, that he was appealing the "final judgment" and that he "desire[d] to appeal all other appealable orders and/or decisions of the trial court in the above-referenced matter." (I C.R. at 99-100).

After the appeal was docketed in the Court of Appeals, Appellant filed a motion to be placed on shock community supervision, (I Supp. C.R. at 3-4), and the trial court granted the motion. (I Supp. C.R. at 8-9). During the shock community supervision hearing, the court stated that all of Appellant's financial obligations would remain the same as they were previously. (VI R.R. at 7). In that regard, the prosecutor commented: "I don't think there was any restitution." (VI R.R. at 8). Nevertheless, Appellant was ordered to pay restitution in the amount of $2,045.00 as part of his conditions of shock community supervision. (I Supp. C.R. at 6). Thus, Appellant's primary complaint on appeal was directed at this condition. (Appellant's Brief, Pages 13-25).

However, Appellant did not file a new notice of appeal from the judgment in which his sentence was suspended and he was placed on shock community supervision. (I C.R. at 1-105) (I Supp. C.R. at 1-19). Therefore, the Court of Appeals questioned whether it had jurisdiction over the appeal, and Appellant filed

a response explaining the why the Court had jurisdiction: courts have held that a notice of appeal, in this scenario, is timely if, and only if, it is timely filed with respect to the imposition of sentence, and Appellant timely filed his notice of appeal with respect to the imposition of sentence, and in the alternative, Appellant's notice of appeal could be treated as a premature notice of appeal under Rule 27.1. (*See* Appellant's Response to the Court's Intent to Dismiss for Lack of Jurisdiction).

The Court of Appeals disagreed with both arguments, and dismissed the appeal for lack of jurisdiction. *Smith v. State*, 518 S.W.3d 641, 642-645 (Tex. App.—Waco 2017), *petition for discretionary review granted* (Aug. 23, 2017).

SUMMARY OF THE ARGUMENT FOR ISSUE ONE

ISSUE ONE: When a defendant files a timely notice of appeal from a judgment adjudicating his guilt and is later placed on shock community supervision, to complain on appeal about a condition of that community supervision must he file a new notice of appeal?

To complain about conditions of shock community supervision, a defendant must perfect his appeal within the timeframe that runs from the date the original sentence was imposed. This is because the original judgment is complete at that time, subject only to later modification through the suspension of the sentence and the imposition of community supervision. Appellant timely perfected his appeal

from the date the original sentence was imposed. Therefore, no new notice of appeal was required.

That the later modification came through a judgment rather than order, as seems to have troubled the Waco Court, is of no moment: the result—suspension of the sentence—is the same no matter the title of the document. Holding otherwise elevates form over substance. Thus, even though the later document was called a "judgment", it remains true that the original sentence was complete, subject to modification.

Alternatively, Appellant's notice of appeal is a prematurely filed notice of appeal that is deemed filed the same day as, but after, the judgment complained of. This is because Appellant's notice of appeal was filed after the finding of guilt but before the suspension of sentence. The Waco Court rejected this interpretation by concluding it was too broad. However, this interpretation comports with the text of the rule, and it is hardly broader than this Court's decision in *Kirk*, whereby this Court treated a notice of appeal as being premature with respect to the later order rescinding the grant of a new trial. In *Kirk*, based on Rule 27.1 and this Court's concern that a late "ungranting" of a motion for new trial could deprive the defendant of his right to appeal, the defendant would be allowed to complain on appeal about both the original judgment and the trial court's decision to rescind its order granting a new trial. Applying *Kirk* and Rule 27.1 here, we should treat

Appellant's notice of appeal as allowing him to complain both about the original judgment and the conditions of community supervision imposed on him through the judgment granting shock community supervision. This is especially true since Waco decided an appeal of the original judgment became moot with the second judgment—but this just means that a defendant in Appellant's situation will be deprived of his right to appeal, just as a defendant in a "*Kirk* situation" would be.

ARGUMENT FOR ISSUE ONE

A. The notice of appeal was timely under *Perez*, *Dodson*, and Dix & Schmolesky

1. Professors Dix and Schmolesky

In their treatise, Professors Dix and Schmolesky observe that

> In a "shock community supervision" situation, the time for perfecting appeal has been held to run from the time the sentence of incarceration is imposed. A later order suspending execution of that sentence and placing the defendant on community supervision does not alter calculation of the timeliness of notice of appeal. The original sentence is in no sense incomplete or ambiguous but rather simply subject to modification.
>
> George E. Dix & John M. Schmolesky, *Texas Practice Series: Criminal Practice and Procedure*, 43B Tex. Prac., Criminal Practice And Procedure § 55:25 (3d ed.) (footnotes omitted).

The professors cited *Perez v. State* to support this conclusion.

Reviewing *Perez* shows not only that a defendant must timely perfect his appeal with respect to the original judgment imposing his sentence if he wishes to

complain about that judgment, but he must also timely perfect his appeal with respect to the original judgment imposing his sentence if he wishes to complain about conditions of community supervision imposed when that sentence is suspended later through the imposition of shock community supervision.

2. *Perez v. State*

Perez v. State, 938 S.W.2d 761 (Tex. App.—Austin 1997, pet. ref'd) is the leading case holding that a defendant does not have the right to complain on appeal about a trial court's order granting shock probation. In that case, on September 15, 1995, the trial court assessed the defendant's punishment at ten years' imprisonment. *Id*. at 762. On February 12, 1996, the trial court suspended his sentence and placed him on shock probation. *Id*. On February 23, 1996, the defendant gave his first, and only, notice of appeal. *Id*.

The Austin Court first decided that the defendant's attempted appeal from an order granting shock probation was not permitted by law. *Id*. at 762-763.

Next, *Perez* decided that the defendant's attempted appeal was not timely perfected because he did not file a notice of appeal with respect to the judgment imposing his sentence. *Id*. at 763. The defendant argued that his time to perfect his appeal ran from February 12, 1996, when the conditions of community supervision were imposed. *Id*. The Court rejected this argument because "the conditions of supervision were not a necessary part of the judgment in this cause."

Id. Instead, a trial court can grant shock probation only if the court has already imposed a sentence, so the defendant's time to appeal ran from the date his sentence was imposed and not the date that sentence was suspended: "Section 6(a) requires that a court impose a sentence before it can consider a motion to suspend further execution of the sentence. Because appellant's sentence was imposed on September 15, 1995, his time to perfect an appeal ran from that date." *Id*. Thus, even "if we consider this appeal as being from the judgment of conviction, it was not timely perfected." *Id*.

So, following the reasoning of *Perez*, to attack the conditions of community supervision imposed through shock community supervision,[1] the defendant must file a timely notice of appeal from the judgment imposing, not suspending, the sentence. This is precisely what Appellant did. (I C.R. at 93-94; 99-100).

3. *Dodson v. State*

The San Antonio Court has followed *Perez*'s reasoning. In *Dodson v.*

[1] The Austin Court was willing to entertain the characterization of Perez's appeal as not technically being one from shock probation, but rather, as being an appeal from the original judgment, as modified by the conditions of community supervision later imposed. *Perez v. State*, 938 S.W.2d 761, 763 (Tex. App.—Austin 1997, pet. ref'd); *See* George E. Dix & John M. Schmolesky, *Texas Practice Series: Criminal Practice and Procedure*, 43B Tex. Prac., Criminal Practice And Procedure § 55:25 (3d ed.) ("A later order suspending execution of that sentence and placing the defendant on community supervision does not alter calculation of the timeliness of notice of appeal. The original sentence is in no sense incomplete or ambiguous but rather simply subject to modification."). Of course, because the Court had already held that no appeal may be taken from an order granting shock probation, the Court could not decide that the right to appeal such an order did exist, but the notice of appeal must be filed from the date the sentence that was suspended was imposed.

State, 988 S.W.2d 833 (Tex. App.—San Antonio 1999, no pet.), the defendant was sentenced on May 19, 1998. *Id*. at 833. His trial counsel timely filed motions for shock probation, but the hearing occurred on November 17, 1998—seemingly just outside the statutory period. *Id*. at 834. Thus, the trial court denied the motions, and the defendant's "counsel immediately sought to appeal these decisions." *Id*.

Dodson first observed that no appeal lies from an order denying shock probation. *Id*. at 834. In response to the defendant's argument that "these appeals concern the court's perceived lack of jurisdiction rather than the denial of [an order requesting shock probation]", the Court decided the defendant had not timely perfected his appeal: "However, as the time to invoke appellate jurisdiction expired thirty days following imposition of the sentences, we, too, are without authority to consider the matter." *Id*. (citing *Perez*).

Unlike *Dodson* and *Perez*, Appellant timely perfected his appeal from the date of the original sentence. (I C.R. at 93-94; 99-100). Therefore, the merits of his claims are reviewable.

4. Waco's reasoning and Appellant's response

Waco parted ways with these authorities by holding that a defendant must file a timely notice of appeal from the later judgment suspending the sentence:

> If a defendant's motion for shock probation is granted, as in this case, and it results in a new judgment and conditions of community supervision, the appeal of the first/original judgment is moot. Any complaint about the

> shock probation judgment will be the subject of an appeal about that judgment. But to complain about that judgment, a defendant must file a notice of appeal directed at the new judgment.
>
> *Smith v. State*, 518 S.W.3d 641, 645 (Tex. App.—Waco 2017), *petition for discretionary review granted* (Aug. 23, 2017).

The fact that there are two separate proceedings resulting in two separate judgments seems to have troubled the lower court, *Id*. at 643, n. 1 ("This case is, however, the only case we have been able to find in which there was effectively a new sentencing hearing and an entirely new and complete judgment signed by the trial court rather than merely an order that suspended the sentence set out in the prior judgment and enunciated the conditions of community supervision. This makes the issues cleaner and easier to address and very different from the issue as addressed in *Shortt v. State*, No. 05-13-01639-CR, 2015 Tex. App. LEXIS 4808, 2015 WL 2250152 (Tex. App.–Dallas May 12, 2015, pet. granted)"), and may be the reason the court differed from *Perez*, since *Perez* involved a later order rather than a judgment.[2] But it is unclear why this distinction should make a difference when, whether by order or judgment, the result is the same: the suspension of the earlier sentence and the placement of the defendant on shock community

[2] Although *Perez* does not state whether a hearing was held nor whether Article 42.12, Section 6(c) required such a hearing at that time, *Perez*, 938 S.W.2d at 762, Article 42.12, Section 6(c), at least as it applies to this case, does not permit a judge to grant a motion for shock community supervision without holding a hearing. Tex. Code Crim. Proc. art. 42.12, §6(c) [now Tex. Code Crim. Proc. art. 42A.202].

supervision. In either case, the original judgment and sentence were complete, subject to modification, *see Perez*, 938 S.W.2d at 763, as opposed to incomplete, requiring supplementation. *See Bailey v. State*, 160 S.W.3d 11, 16 (Tex. Crim. App. 2004) (sentencing not complete until later restitution order entered, so time to perfect appeal ran from that time, rather than date of original sentencing) *and Arguijo v. State*, 738 S.W.2d 367, 369 (Tex. App.—Corpus Christi 1987, no pet.) (where defendant received probated sentence from jury, judgment not "made whole" until conditions of community supervision were imposed later, making the time to perfect appeal run from the date the conditions were imposed).

Perhaps the distinction between a judgment and order matters because a judgment and an order are somehow fundamentally different? If so, they are not fundamentally different in a way that has any bearing on this case. A "judgment" is "the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant" that must contain a host of particularities. Tex. Code Crim. Proc. Art. 42.01, Sec. 1. By contrast, an "order" has been defined as "a command, direction, or decision on a collateral or intermediate point in a case which is made when the judge announces his decision on the matter before him." *Westbrook v. State*, 753 S.W.2d 158, 159 (Tex. Crim. App. 1988). That order may then, of course, be reduced to writing. *Id*. Here, the trial court signed a new judgment (which, frankly, it may be required to do), s*ee*

Tex. Code Crim. Proc. Art. 42.01, Sec. 1(10) ("[i]n the event of conviction where the imposition of sentence is suspended and the defendant is placed on community supervision," a judgment must "[set] forth the punishment assessed, the length of community supervision, and the conditions of community supervision"), to suspend the sentence. But, the trial court could have accomplished the same goal through a written order suspending the previous sentence and granting Appellant shock community supervision, rather than a new judgment doing the same. Why give the title of the document special significance when an order would have looked more or less the same, *cf.* (I C.R. at 16-17) (order of deferred adjudication) *with* (I Supp. C.R. at 8-9) (judgment suspending sentence), and would have reached the same result? And if the trial court should have entered an order suspending the sentence rather than a judgment, then the second judgment should be treated simply as a mistitled order. *Cf. State v. Savage*, 905 S.W.2d 268, 272 (Tex. App.—San Antonio 1994) ("We hold that the order granting appellee's motion for judgment non obstante veredicto is, in effect, an order granting a motion for new trial."), *aff'd*, 933 S.W.2d 497 (Tex. Crim. App. 1996). Either way, though, we seem to be getting mired in technicalities: the judge suspended the sentence through a written decision. Whether that decision is contained in a judgment or order, it remains the case that the original judgment was complete, subject to modification, so the notice of appeal needed to be timely filed with

respect to the original judgment, not a later modification. *Perez*, 938 S.W.2d at 763; George E. Dix & John M. Schmolesky, *Texas Practice Series: Criminal Practice and Procedure*, 43B Tex. Prac., Criminal Practice And Procedure § 55:25 (3d ed.). The new judgment was simply a modification of the old one, just as a new order would have been a modification of the older judgment. The new judgment was not the completion or "full flowering", so to speak, of the original one. *Cf. Bailey*, 160 S.W.3d at 16; *Arguijo*, 738 S.W.2d at 369.

B. The notice of appeal was timely because it was premature

1. Rule 27.1(b)

Appellant also asked the lower court to treat his notice of appeal as a prematurely-filed notice of appeal under Texas Rule of Appellate Procedure 27.1(b). That rule provides that

> In a criminal case, a prematurely filed notice of appeal is effective and deemed filed on the same day, but after, sentence is imposed or suspended in open court, or the appealable order is signed by the trial court. But a notice of appeal is not effective if filed before the trial court makes a finding of guilt or receives a jury verdict.
>
> Tex. R. App. P. 27.1(b).

Waco rejected Appellant's invitation by citing *Franks v. State*, 219 S.W.3d 494 (Tex. App.—Austin 2007, pet. ref'd), which held that, "under Rule 27.1(b), a prematurely filed notice of appeal is one that is filed in the time period after the jury's verdict and before sentence is imposed." *Id*. at 497. However, that holding

is incomplete in light of the text of the rule: after all, a prematurely filed notice of appeal will also be one that is "filed between conviction and *suspension* of sentence". Tex. R. App. P. 27.1(b) ("a prematurely filed notice of appeal is effective and deemed filed on the same day, but after, sentence is…suspended in open court"). The text of the rule does not prohibit that reading, and in fact demands it, since a notice of appeal may be premature either with respect to the imposition or the suspension of sentence (or another appealable order, for that matter). Tex. R. App. P. 27.1(b). In essence, the text of Rule 27.1 simply requires the premature notice of appeal to be filed after a guilty finding is made or a jury verdict is received, (a notice of appeal is "not effective if filed before the trial court makes a finding of guilt or receives a jury verdict"), but before a sentence is either imposed or suspended or an appealable order is signed ("a prematurely filed notice of appeal is effective and deemed filed on the same day, but after, sentence is imposed or suspended in open court, or the appealable order is signed by the trial court"). Tex. R. App. P. 27.1(b). Appellant's notice of appeal—which itself was worded broadly to cover both the final judgment and any appealable order or decision (I C.R. at 99-100)—meets these requirements, so he should not be required to file another notice.[3]

[3] Rule 27.1(b) does not state that once a sentence has been imposed or suspended, this "cuts off" the ability of an already-filed notice of appeal to be premature with respect to a later imposition

Thus, leaving aside appealable orders as not relevant to this case, a prematurely filed notice of appeal, is either one that is filed between conviction and the imposition of sentence, *Franks*, 219 S.W.3d at 497, or one that is filed between conviction and the suspension of sentence. Tex. R. App. P. 27.1(b).

In this case, Appellant's notice of appeal was filed after his conviction but before his sentence was suspended. (I C.R. at 93-96; 99-100) (I Supp. C.R. at 8-9). Therefore, his notice of appeal can be treated as a prematurely filed notice of appeal to avoid forfeiture, which is disfavored, of his right to appeal. Tex. R. App. P. 27.1(b); *Dallas County v. Sweitzer*, 881 S.W.2d 757, 762 (Tex. App.—Dallas 1994, writ denied) ("We give the Rules of Appellate Procedure liberal construction, particularly as they relate to filing a notice of appeal…A technical application of the rules should not defeat the right to appeal…Where doubt exists about a rule's meaning, we resolve the issue to sustain rather than to defeat the appeal.") (citations omitted).

2. *Kirk v. State*

Although Waco declined to adopt this reading of the rule that supports a defendant's right to appeal by stating, "We are not inclined to interpret the rule as broadly as Smith argues", *Smith*, 518 S.W.3d at 644, Appellant's interpretation is hardly broader than this Court's interpretation in *Kirk v. State*, 454 S.W.3d 511,

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or suspension of sentence. Neither Waco nor any other Court, to Appellant's knowledge, has held as much.

515 (Tex. Crim. App. 2015). There, this Court decided that because "rescinding an order granting a new trial outside the seventy-five-day time limit" could deprive a defendant of his ability to appeal, when the rescission occurs outside that time limit "the rescinding order shall be treated as an 'appealable order'", and "[i]f the defendant previously filed a notice of appeal with respect to the trial court's judgment of conviction, that notice shall be treated as a prematurely filed notice of appeal with respect to the rescinding order, and the defendant will be entitled to appeal, not only the trial court's decision to rescind the order granting a new trial but also any issue that he could have appealed if the motion for new trial had never been granted.") *Id*. (footnotes omitted).

Here, the language and effect of Waco's decision discloses that the same concerns motivating this Court in *Kirk*—that a later action by the trial court may deprive the defendant of his ability to appeal—are present here: the "appeal of the first/original judgment is moot", so the lower court decided, when the trial court's granting of shock community supervision "results in a new judgment and conditions of community supervision." *Smith*, 518 S.W.3d at 645. But if the appeal of the first judgment is moot, then granting shock community supervision "depriv[es] [the defendant] of the ability to appeal", *Kirk*, 454 S.W.3d at 515, the judgment originally revoking his community supervision or, in this case, adjudicating his guilt and sentencing him to prison. This is because, if the first

judgment in Appellant's case really became moot[4] when the trial court signed the second judgment, then even if Appellant had complained on appeal about the first judgment, the Court of Appeals would have been required to dismiss the appeal as moot. *See Martinez v. State*, 826 S.W.2d 620 (Tex. Crim. App. 1992) (dismissing petition for discretionary review as moot); *Lamb v. State*, 05-09-00836-CR, 2010 WL 2560548, at *1 (Tex. App.—Dallas June 28, 2010, no pet.) (mem. op., not designated for publication) ("If a case is moot, the appellate court is required to vacate any judgment or order in the trial court and dismiss the case.").

Whether or not the appellate court's conclusion is correct that the first judgment is moot,[5] there is little reason to decline to apply Rule 27.1 here: under *Franks* and Rule 27.1(b) a prematurely filed notice of appeal must come after

[4] "A case becomes moot on appeal when the judgment of the appellate court can no longer have an effect on an existing controversy or cannot affect the rights of the parties." *Jack v. State*, 149 S.W.3d 119, 123 n. 10 (Tex. Crim. App. 2004). Surely a defendant can still advance on appeal a defense to the trial court's original decision even though he has been granted shock community supervision, just as a defendant who receives community supervision following a jury trial may appeal issues relating to his conviction? Certainly, some *aspects* of an original judgment may be moot in light of a second. For example, if the first judgment erroneously orders an indigent defendant to reimburse the county attorney's fees for his court-appointed counsel, but the second does not, a complaint a defendant has about that error in the first judgment is rendered moot by the second. But surely the judgment as a whole is not rendered moot, at least not in every case.

[5] At least one other court has used the term "moot", with respect to shock community supervision, to describe a second judgment's effect on the first for purposes of appeal, but that case involved the imposition of shock community supervision after the defendant challenged the sentence on appeal (as opposed to the decision to convict). *Parker v. State*, 01-15-00334-CR, 2015 WL 5297526, at *1-2 (Tex. App.—Houston [1st Dist.] Sept. 10, 2015, no pet.) (mem. op., not designated for publication). If a defendant's complaint about the first judgment is limited to the sentence it imposes, and the defendant later receives a suspension of that sentence or a new shot, through a new trial, at a new sentence, then naturally a complaint about the first judgment may be moot. But the mere signing of a new judgment will not render each and every complaint about the first judgment moot, as Waco seems to have held here.

conviction, *Franks*, 219 S.W.3d at 497, Tex. R. App. 27.1(b), and under Rule 27.1(b) the premature notice of appeal may be early with respect to the imposition or the suspension of sentence, Tex. R. App. 27.1(b), so why can a defendant's notice of appeal not be considered premature if, as here, he files it after he is convicted and sentenced but before he is placed on shock community supervision?

Conclusion

Had Perez or Dodson done what Appellant did here, their claims would have been reviewed on the merits. Under *Perez*, *Dodson*, and the treatise of Professors Dix and Schmolesky, then, Appellant's appeal is timely and reviewable on the merits.

But even if the Court disagrees, Appellant's notice of appeal may still be treated as a prematurely filed notice of appeal, and he may appeal the judgment suspending his sentence.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Appellant asks this Court to REVERSE and REMAND the case to the Tenth Court of Appeals for consideration of Appellant's three issues.

Respectfully submitted:

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CERTIFICATE OF COMPLIANCE

I hereby certify that according to Microsoft Word's word count tool, the relevant portions of this document contain 4,314 words.

/s/ Justin Bradford Smith
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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2017, a true and correct copy of Appellant's Brief was forwarded to the counsel below by email and/or eservice:

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